

OGC 73-0772

3 May 1973

MEMORANDUM FOR: Chief, Central Travel Branch

SUBJECT : Transportation Entitlement for Husband
and Wife Staff Employees

REFERENCE : Office of Legislative Counsel Opinion--
OLC 67-1075, dtd 23 Aug 67, Re Legis-
lative and Administrative Authority for
Payment of Travel Expenses, Allowances
and Other Fringe Benefits to Agency
Employees

1. You requested the opinion of this Office as to the transportation entitlements of husband and wife staff employees who simultaneously are being ordered to a permanent change of station (PCS) abroad.

2. Discussions with [] (Budget and Finance, Office of Communications) indicate that the husband is a GS-08 Records Analyst/Administrative Assistant, and his wife is a GS-07 Secretary/Stenographer. The husband's career service action indicates that he requested a transfer for his wife to his duty station abroad after he learned of his forthcoming transfer. Apparently there was a job opening there and she has been selected to fill that position. His family has been authorized to travel with him and he has been restricted to a limited shipment.

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3. The Agency's statutory authority for the payment of employee travel and transportation expenses is contained in Section 4 of the CIA Act of 1949, as amended. Although one could make the argument that strict and literal construction of the language

of Section 4, subsections (1)(C), (D) and (E) would limit the payment for transporting, packing, unpacking and storing the furniture, household and personal effects solely to those of the officer or employee--these sections do not specifically authorize the transporting, packing, unpacking and storage of furniture, household and personal effects of members of the family of the officer or employee--that position is not the one that the Agency or other Government offices have followed. The Agency historically, and we think reasonably, has interpreted the language "of an officer or employee" of subsections (C), (D) and (E) to include the furniture, household and personal effects of his family. The statutory provisions regarding transporting household effects to a new post applicable to certain State Department employees is contained in the United States Code at 22 U.S.C.A. 1136(3), (4) and (5). These provisions are virtually identical to those of Section 4(1)(C), (D) and (E). The State Department also has interpreted the language "of an officer or employee" to include the furniture, household and personal effects of his family. In addition, the State Department in a memorandum from the Deputy Under Secretary of State for Management, dated 17 February 1972, established the policy that:

Each employee member of a working couple shall receive all benefits relating to his or her employment, on the same basis as do all other employees Household effects shipping and storage allowance and quarters allowances will normally be granted at the "without family" rate for each employee if there are no dependents. If the working couple has dependents, one, but not both, of the employed members of the family will normally be granted the "with family" rate.

STAT 4. [] implements the statutory
STAT [] provisions of Section 4(1)(C), (D) and (E). Among other things,
[] defines the maximum weight limitations for shipment and storage of effects. It contains schedules for limited shipments for circumstances when the family is authorized to travel with the employee and when the family is not authorized to travel. There

is no definition in the statutes or in the Agency regulations as to what constitutes a family for purposes of shipping and storage to a post abroad. Although [] does state that "when an employee is assigned to a post abroad, his dependents for purposes of travel (except educational travel) are (a) spouse...", unfortunately, the definition is not explicitly applicable for transportation purposes.

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5. Regulations applicable to the Agency's employees being transferred between domestic stations and to most other civilian Government employees (except Foreign Service) being transferred both abroad and between domestic stations are promulgated by the Office of Management and Budget. Although not binding on Agency travel and transportation abroad, the OMB has prescribed the eligibility for transportation allowances when two family members are Government employees. In OMB Circular No. A-56, dated 17 August 1971, they state at Section 1.7 that if two or more members of an immediate family are entitled to allowances as Government employees incident to movements between official stations, the allowances authorized will apply only to one member, the other being eligible as a family member only.

6. The Joint Travel Regulations which prescribe the regulations of all persons in the Uniformed Services state at Chapter 8, Section M8003-3:

When both husband and wife are members / of the Uniformed Services/, the prescribed weight allowance of each may be combined for the purpose of shipment of their household goods at Government expense, incident to the transfer of both under permanent change-of-station orders....

7. It is our opinion that the statutory and regulatory provisions applicable to Agency travel and transportation abroad do not legally prohibit considering the spouse employee of an Agency

employee being transferred abroad as an independent employee for purposes of establishing transportation and storage allowances. Conversely, these provisions do not give the two employees the right to be considered separately for these allowances. Although we have listed the transportation allowance policy of several other organizations, none of those policies are binding at the Agency. Therefore, we would have no legal objection if the authority issuing the PCS action for each Agency employee determines that the husband-wife employees are entitled to a separate weight allowance.



Office of General Counsel

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